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OFFICE OF PETITIONS

In re Application of
Henry Brian Barry
Application No. 10/751,231
Filed: January 2, 2004
Attorney Docket No. P-1880

DECISIONS ON PETITIONS

This is a decision on the petition under 37 CFR 1.137(a), filed June 6, 2005, to revive the above-identified application, which is first being treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

On November 18, 2004, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the Office mailed a Notice of Abandonment on May 31, 2005.

In the present petition, petitioner asserted that petitioner filed a timely response to the nonfinal Office action via facsimile transmission on January 11, 2005. With the present petition, petitioner submitted copies of a Transmittal Form, an Amendment, and a Transmission Verification Report, and authorized the Office to charge the Deposit Account for any necessary fees.

A review of the copy of the Transmittal Form reveals that petitioner included the following information: the application number; attorney docket number; Examiner's name; the Group Art Unit, and the attorney's name. A further review of the Amendment indicates that petitioner also included the USPTO Central Facsimile Number; the attorney's name, address, telephone number; and a certificate of transmission signed by the attorney and dated January 11, 2005. The Transmission Verification Report shows that 11 pages were successfully transmitted to fax number 1-703-872-9306¹ on January 11, 2005 at 14:27.

¹ The Office notes that petitioner used the correct Central Facsimile Number for transmitting documents to the USPTO, as it existed on January 11, 2005. On July 15, 2005, the Central Facsimile Number changed to 571-273-8300.

37 CFR 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the U.S. Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In view of the above, the required reply is considered timely filed pursuant to 37 CFR 1.8. Accordingly, petition to withdraw the holding of abandonment is granted. The application will be restored to pending status.

The Office has concluded that the USPTO timely received the reply to the nonfinal Office action and that the Notice of Abandonment was mailed in error. Accordingly, the petition under 37 CFR 1.137(a) is dismissed as involving a moot issue. The Office did not charge the Deposit Account the fee for filing the petition to revive in the above-reference application.

This matter is being referred to Technology Center Art Unit 3724.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

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